Supreme Court, U.S.
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No. 90-1216

In The
Supreme Court of the United States
October Term, 1990

Transportation-Communications International Union,

Petitioner,

vs.

MT Properties, Inc.,

Respondent.

On Petition for a Writ of Certiorari to the
United States Supreme Court
from the Eighth Circuit Court of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRIGGS AND MORGAN
R. Scott Davies
Timothy R. Thornton*
Michael Thomas Miller
2400 IDS Center
Minneapolis, Minnesota 55402
(612) 339-0661

Attorneys for Respondent
***Counsel of Record**

1991 • EXECUTEAM/LAW DIV., 93 W. Little Canada Rd., St. Paul MN 55117 • 612/483-8180 • 800/747-8793

QUESTION PRESENTED

In a case where a rail carrier leaves the rail business by transferring all its rail assets to a non-carrier and the ICC grants an *Ex Parte 392* exemption to that transaction, does the carrier have any RLA duty to arbitrate after the exemption becomes effective?

RULE 29.1 LISTING

MT Properties, Inc.

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PROCEEDINGS BELOW

After hearing the parties' cross-motions for summary judgment on January 11, 1989, the United States District Court for the District of Minnesota granted a declaratory judgment in favor of plaintiff MT Properties, Inc. and against defendant Transportation-Communications International Union by ordering that the parties were not required to arbitrate their dispute. *MT Properties, Inc. v. Transportation-Communications Employees Union*, No. 3-88-52 (D. Minn. Jan. 19, 1989). On September 20, 1990, the

United States Court of Appeals for the Eighth Circuit affirmed the district court's judgment relying on other reasoning. *MT Properties, Inc. v. Transportation-Communications International Union*, 914 F.2d 1083 (8th Cir. 1990). On October 31, 1990, the Court of Appeals denied defendant's petition for rehearing and suggestion for rehearing en banc.

STATEMENT OF THE CASE

Respondent MT Properties, Inc. (MT) (originally Minnesota Transfer Railway Co.) operated terminal rail service in the Minneapolis-St. Paul metropolitan area. As such, it was a carrier under the Railway Labor Act, 45 U.S.C. §§ 151-188 (RLA). Due to financial necessity, MT decided to eliminate its rail operations and become solely a real estate holding company.

On January 21, 1987, MT agreed to dispose of its entire rail assets through a 50 year lease to Minnesota Commercial Railway Co. (MCRC). MCRC was not a carrier under the RLA. On February 1, 1987, MT correspondingly abolished all rail-connected jobs, including the jobs held by the 10 employees represented by petitioner Transportation-Communications International Union (TCU).

MCRC then applied for an exemption with the Interstate Commerce Commission (ICC) pursuant to *Ex Parte 392 (Sub. No. 1), Class Exemption for the Acquisition and Operation of Rail Lines Under* 49 U.S.C. § 10901, 1 I.C.C.2d 810 (1986) (*Ex Parte 392*), *review denied sub nom. Illinois Commerce Commission v. ICC*, 817 F.2d 145 (D.C. Cir. 1987). Such an exemption would excuse the rail line sale from full compliance with ICC regulations. MCRC's application was published in the Federal Register on February 20, 1987 and the exemption became effective on

February 27, 1987. Pursuant to the exemption, no labor protection conditions were imposed on the acquisition.

The Brotherhood of Maintenance of Way Employees (BMWE) filed a petition with the ICC seeking to revocate the exemption. The BMWE claimed that labor protection conditions should be imposed on the acquisition because allegedly the transaction was an abandonment and sale of a rail line between two carriers. The ICC denied the petition because BMWE failed to show that MT and MCRC were both carriers.

Petitioner TCU subsequently raised its dispute with MT. TCU and MT were parties to two collective bargaining agreements: (1) the Washington Job Protection Agreement of 1936 (WJPA) and (2) the Job Stabilization Agreement of February 7, 1965 (Stabilization Agreement). MT's designated representative under the WJPA and the Stabilization Agreement was the National Railway Labor Conference (NRLC). By letter dated November 4, 1987, TCU requested the NRLC to order its Dispute Committee to decide the proper interpretation and application of the collective bargaining agreements. The NRLC referred the dispute to Special Board of Adjustment No. 605 (Special Board), an arbitration panel established by the collective bargaining agreements and the RLA.

MT then filed this case seeking a declaratory judgment that the Special Board lacked jurisdiction because the parties were not required to arbitrate the dispute. TCU counterclaimed seeking to compel arbitration. In granting MT's requested relief, the District Court determined that the ICC exemption preempted the Special Board's jurisdiction under the RLA.

Prior to TCU's appeal being heard by the Court of Appeals, this Court decided a remarkably similar case. *Pittsburgh & Lake Erie Railroad Co. v. RLEA*, 491 U.S. 490, 109 S. Ct. 2584 (1989). Applying *Lake Erie*, the Court of Appeals held that MT had no

duty under the RLA to arbitrate the effects of the transfer once the ICC exemption became effective on February 27, 1987. 914 F.2d at 1088-89. TCU's request for arbitration did not occur until November 4, 1987 and therefore arbitration could not be compelled. *Id.* at 1089.

REASONS FOR DENYING THE WRIT

I. The Court of Appeals Correctly Applied This Court's Decision in *Lake Erie*

In *Pittsburgh & Lake Erie Railroad Co. v. RLEA*, 491 U.S. 490, 109 S. Ct. 2584 (1989), this Court considered facts and legal issues strikingly similar to those presented here. In both cases, an RLA carrier sought to relieve its financial problems and leave the rail business by transferring its rail assets to a non-carrier. Both non-carriers applied for, and were granted, exemptions pursuant to *Ex Parte 392*. According to the exemptions, no labor protection conditions were imposed on the transactions by the ICC. In each case, employees represented by the involved union were affected by the transaction. Each union sought relief under the RLA. In both cases, the respective court determined that such relief was unavailable.

In reaching its decision, this Court addressed the respective goals and purposes of the RLA and the Interstate Commerce Act, 49 U.S.C. § 1010 *et seq.* (1982 & Supp. V) (ICA). This Court sought to harmonize those two enactments by determining whether and at what point the RLA gave way to the ICA. It was decided that the RLA was to be applied until the *Ex Parte 392* exemption became effective. At that point, the interests of the ICA became controlling. *Lake Erie*, 109 S. Ct. at 2597.

In deciding the instant case, the Court of Appeals merely applied the principles established in *Lake Erie*.

> The Supreme Court has already identified and weighed the respective RLA and ICA interests at stake and has articulated an analytical framework which reflects its accommodation of the competing interests. We are required to apply this framework, and are not free to undertake our own *ad hoc, de novo* balancing of the competing interests every time a case arises that involves a conflict between the ICA and RLA. The competing statutory interests are reconciled in this case

> by enforcing the employees' RLA rights until the *Ex Parte 392* exemption became effective, after which the ICA obligations were controlling.

MT Properties, Inc. v. Transportation-Communications International Union, 914 F.2d 1083, 1089 (8th Cir. 1990).

The Court of Appeals did not create any new law. It merely repeated the *Lake Erie* analysis in a similar situation. As a result, no conflict exists between these two decisions.

Petitioner TCU attempts to generate a conflict by reading *Lake Erie* in an unduly narrow manner. In *Lake Erie*, this Court addressed the RLA's mandatory notice, bargaining and status quo provisions. 109 S. Ct. at 2589. Here, the Court of Appeals considered the RLA's mandatory arbitration provisions. *MT Properties, Inc.*, 914 F.2d at 1088-89. Petitioner TCU desperately argues that the Court of Appeals' application of *Lake Erie* was overreaching.

To the contrary, the Court of Appeals' decision here is fully consistent with *Lake Erie*. In both cases, the court recognized the Congressional mandate in favor of "streamlining procedures to effectuate economically efficient transactions." *Lake Erie*, 109 S. Ct. at 2597. It is not dispositive that the cases concerned different provisions of the RLA. "[S]ales of rail lines would be deterred just as much by requiring post-sale arbitration under Section 153 First (i) as they would by requiring pre-sale bargaining under Section 156." *MT Properties, Inc.*, 914 F.2d at 1090.

In reality, *Lake Erie* broadly addressed the interaction between the RLA and the ICA in the context of a carrier's transfer of its entire rail assets to a non-carrier. As this Court determined, that interaction requires the ICA to control after an *Ex Parte 392* exemption is issued. The RLA as a whole does not control after that point because the transferor is no longer a carrier. Therefore, pursuant to *Lake Erie*, it is irrelevant which RLA provision is sought to be enforced.

Petitioner TCU also attempts to create a conflict by reading the Court of Appeals' decision here too broadly. It refuses to acknowledge that the decision applies only to post-exemption

enforcement of the RLA. Instead petitioner would have this Court believe that the Court of Appeals' decision somehow permits a carrier to avoid any private contract obligation once an ICC exemption becomes effective. This prolific jump in logic is inexplicable and misplaced. There is no conflict between the Court of Appeals' decision and *Lake Erie*. As a result, no further review is warranted.

II. The Court of Appeals Decision Does Not Conflict With This Court's Prior and Unrelated NLRA Decisions

Petitioner TCU claims the Court of Appeals opinion, and thus *Lake Erie*, conflicts with this Court's decisions in two cases applying the National Labor Relations Act. *See Nolde Brothers, Inc. v. Local No. 358*, 430 U.S. 243 (1977); *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964). TCU's assertion is that RLA employees should be entitled to the identical rights and interests afforded NLRA employees. This allegation is meritless, however, given the unique legislative histories separating these two enactments. As stated previously by this Court, "the National Labor Relations Act cannot be imparted wholesale into the railway labor arena. Even rough analogies must be drawn circumspectly, with due regard for the many differences between the statutory schemes." *Brotherhood of R. R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969). Accordingly, no conflict exists between these distinct cases.

Nonetheless, the cases cited by petitioner are easily distinguished. In *John Wiley & Sons*, this Court held that "the disappearance by merger of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically terminate all rights of the employees covered by the agreement." 376 U.S. at 548. As a result, the successor employer was required to arbitrate with the union. *Id.* at 551 ("We do not hold that in every case in which the ownership or corporate structure of an enterprise is changed the duty to arbitrate survives."). In *Nolde Bros.*, the corporate employer and the union negotiated regarding

changes in their collective bargaining agreement prior to and after the agreement's expiration. Given that scenario, this Court determined the parties should arbitrate their dispute even though the agreement had technically expired.

The facts of the instant case are quite different. MT did not merge into MCRC. Instead, MT left the rail business by transferring all its rail assets to MCRC. Further, MT never established an expectation of arbitration because it did not negotiate with the union regarding labor protection either before or after the transfer. MT's decision to cease operations was not caused by an impasse in union negotiations, but was instead driven by unrelated economic reality. It was this specific scenario that was directly addressed by this Court in *Lake Erie*. Petitioner's cases do not control this situation and accordingly no conflict exists.

III. The Court of Appeals Decision Does Not Conflict With an Unrelated Circuit Court Decision

Petitioner TCU further attempts to create conflict by relying on the District of Columbia Circuit Court of Appeals' decision in *Association of Flight Attendants v. Delta Air Lines, Inc.*, 879 F.2d 906 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 1781 (1990). That case does not intersect the Court of Appeals decision here and is easily distinguished.

In *Delta Airlines*, the predecessor corporate employer and the union were parties to a collective bargaining agreement that contained an express successorship clause requiring the predecessor to bind any successor to the agreement. The predecessor carrier merged into its successor carrier without properly binding the merged entity. It was determined that the district court had the authority to order arbitration under those circumstances. 879 F.2d at 917.

Here, no merger occurred. MT, a carrier, transferred all of its rail assets to MCRC, a non-carrier. Further, the parties' collective bargaining agreement did not contain a successorship clause. Given these fundamental differences, *Delta Airlines* is inapposite

and no conflict exists demanding this Court's further attention. *See MT Properties*, 914 F.2d at 1092.

IV. No Constitutional Issue is Presented

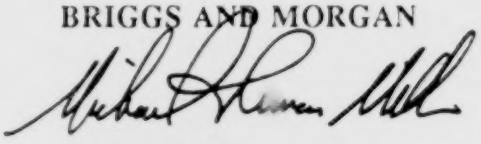
Petitioner TCU claims its members' fifth amendment rights have been violated because they were denied their contractual right to arbitrate under the collective bargaining agreements. This issue was not raised before the district court and therefore is not properly before this Court. *Youakim v. Miller*, 425 U.S. 231, 234 (1976) (general rule is that "this Court does not decide questions not raised or resolved in the lower court"). Nonetheless, as the Court of Appeals determined, there was no duty to arbitrate. *MT Properties*, 914 F.2d at 1092-93. Accordingly, petitioner's members had no entitlement under the agreements and therefore no constitutional issue regarding taking and just compensation exists requiring this Court's review. *Id.* at 1093.

V. Conclusion

For the reasons stated herein, respondent MT Properties, Inc. respectfully requests the petition for certiorari be denied.

Dated: March 4, 1991

BRIGGS AND MORGAN



R. Scott Davies
Timothy R. Thornton*
Michael Thomas Miller
2400 IDS Center
Minneapolis, Minnesota 55402
(612) 339-0661

Attorneys for Respondent
*Counsel of Record